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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,444	11/14/2003	Clifford D. Bennett	442005-00108	9620
7590	03/21/2007		EXAMINER	
Mark P. Levy Thompson Hine LLP P.O. Box 8801 Dayton, OH 45401-8801			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/21/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/713,444	BENNETT, CLIFFORD D.	
	Examiner	Art Unit	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 November 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17, 21 and 22 is/are pending in the application.
 - 4a) Of the above claim(s) 15, 21 and 22 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14, 16 and 17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 November 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Acknowledgment is made of the RCE filed on 11/29/2006. Accordingly claims 1, 6, 9 and 12 have been amended. Claims 15, 21, 22 have been withdrawn, claims 18-20 are cancelled and claims 21-22 have been added.

Response to Arguments

Applicant's arguments filed 11/06/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the receptacles support a post-tension cable in a drooping orientation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments that neither reference (Hanson or Fisher) teaches or discloses a chair having at least three receptacles spaced at equally distant heights from the bottom of the concrete form, examiner notes as presented below, that these features lack criticality and appear to be a mere matter of design choice to one of ordinary skill in the art.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims recite the newly amended limitation of "receptacles positioned at different and equally spaced apart heights from the bottom of the concrete form". The drawings and specification fail to disclose a chair having receptacles where all of the receptacles are spaced at equal distances from the bottom of the concrete form, as the claim indicates. Rather it is disclosed that the receptacles are spaced at equal distances from each other (or similar language). Examiner believes this is the feature applicant intended to claim and therefore the claims will be examined with the interpretation that the receptacles are spaced at equal distances from each other. Appropriate correction to the claim language is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-10, 12-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727).

In regards to claim 1: Hanson et al. teaches a multi-level chair for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair (Figure 10) comprising:

a body including a plurality of receptacles (Figure 1, elements 12; Figure 5, element 30), the plurality of receptacles comprising receptacles positioned at different heights from the bottom of the concrete form (Figure 10, where element 31 is at the top of the chair and elements 12 are at the bottom), said receptacles being adapted to support a post-tension reinforcement cable of a predetermined diameter (Col. 2, lines 21-22).

Hanson does disclose three receptacles, however applicant argues that the lowermost receptacle would not be useful for supporting a reinforcement cable. Examiner notes however that the receptacle is still capable of supporting a reinforcement cable as claimed. Regardless, applicant has not disclosed in the specification that having at least three receptacles solves a stated problem, provides an advantage, or is used for a particular purpose. Further, it is disclosed in the specification on page 9, lines 3-5 that any number of receptacles may be used.

Additionally while Hanson does not expressly disclose that the receptacles are spaced at equally spaced apart heights from the bottom of the concrete form, applicant has not disclosed in the specification that this claimed feature solves a stated problem,

provides an advantage, or is used for a particular purpose. Further it is disclosed in the specification on pages 8-9 that any distance would be acceptable.

It appears to be a matter of obvious design choice to one of ordinary skill in the art to have the at least three receptacles at equally spaced apart heights from the bottom of the concrete, as such a modification would perform, equally well, the same function of supporting reinforcement as the chair of Hanson.

Therefore, it would have been *prima facie* obvious to modify Hanson to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hanson.

In regards to claim 2: The multi-level chair of claim 1 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 3: The multi-level chair of claim 1 above, wherein said body has an inverted V-shape (Figure 10) including a pair of legs extending downwardly from an apex of said body. Where the apex is at element 30 and the legs are elements 34 and 32.

In regards to claim 4: The multi-level chair of claim 3 above, wherein said receptacles are at staggered heights along said legs (Figure 10, where the receptacles 31 and 12 are at different elevations of the chair with 31 being the uppermost).

In regards to claim 6: Hanson et al. teaches a multi-level chair (Figure 10) for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), said body including multiple receptacles comprising receptacles positioned heights from the bottom of the concrete form along said legs (Figure 1, elements 12; Figure 5, element 30), each of said receptacles being sized to support said post-tension reinforcement cable (Col. 2, lines 21-22) so that a user may place said post-tension cable in a selected one of said receptacles.

Hanson does disclose three receptacles, however applicant argues that the lowermost receptacle would not be useful for supporting a reinforcement cable. Examiner notes however that the receptacle is still capable of supporting a reinforcement cable as claimed. Regardless, applicant has not disclosed in the specification that having at least three receptacles solves a stated problem, provides an advantage, or is used for a particular purpose. Further, it is disclosed in the specification on page 9, lines 3-5 that any number of receptacles may be used.

Additionally while Hanson does not expressly disclose that the receptacles are spaced at equally spaced apart heights from the bottom of the concrete form, applicant has not disclosed in the specification that this claimed feature solves a stated problem, provides an advantage, or is used for a particular purpose. Further it is disclosed in the specification on pages 8-9 that any distance would be acceptable.

Therefore it appears to be a matter of obvious design choice to one of ordinary skill in the art to have the at least three receptacles at equally spaced apart heights from

the bottom of the concrete, as such a modification would perform, equally well, the same function of supporting reinforcement as the chair of Hanson.

Therefore, it would have been *prima facie* obvious to modify Hanson to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hanson.

In regards to claim 7: The multi-level chair of claim 6 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 8: The multi-level chair of claim 6 above, wherein said receptacles are identically sized (Figure 3, which depicts the receptacle used in the chair).

In regards to claim 10: The multi-level chair of claim 6 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

In regards to claim 12: Hanson et al. teaches a multi-level chair for supporting a concrete reinforcement cable under tension at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), each of said legs having a fixed length and multiple receptacles comprising at least two receptacles, positioned at different heights (Figure

1, elements 12; Figure 5, element 30) from the bottom of the concrete form along said length of said leg for supporting said reinforcement cable (Col. 2, lines 21-22), wherein a user may support said reinforcement cable in a selected receptacle.

Hanson does not disclose that the multiple receptacles of one of said legs are positioned at different heights with respect to said multiple receptacles of the other of said legs. However applicant has not disclosed that such a feature solves a stated problem, is used for a particular purpose or provides an advantage. It would have been a matter of obvious design choice to one of ordinary skill in the art to modify the receptacles of Hanson as both chairs would perform, equally well, the same function of supporting a reinforcement. Therefore, it would have been *prima facie* obvious to modify Hanson to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hanson.

In regards to claim 13: The multi-level chair of claim 12 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 14: The multi-level chair of claim 12 above, wherein each of said legs terminates in a foot (element 18).

In regards to claim 17: The multi-level chair of claim 12 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727). Hanson et al. teaches a tension cable chair as in claims 6 and 12 above. Hanson is silent as to the distance between cable receiving receptacles. Applicant has not disclosed that having the receptacles spaces $\frac{1}{4}$ or $\frac{1}{2}$ inches apart solves any stated problem or is for any particular purpose or provides an advantage. Moreover, it appears that the chair and receptacles of Hanson et al., or applicant's invention, would perform equally well with the receptacles spaced any distance. Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Hanson such that the receptacles be spaced $\frac{1}{4}$ or $\frac{1}{2}$ inches apart because such a modification would have been considered a mere design consideration which fails to patentable distinguish over Hanson.

Claims 1, 3, 5-6, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (6082068).

Regarding claims 1 and 6: Fisher discloses multi-level chair (Figure 2) capable of supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising:

a body including a plurality of receptacles (13, 17, 21), the plurality of receptacles comprising a plurality of receptacles positioned at a height from the bottom of the concrete form, said receptacles are capable of supporting a post-tension reinforcement cable of a predetermined diameter.

Fisher does disclose three receptacles, regardless, applicant has not disclosed in the specification that having at least three receptacles solves a stated problem, provides

an advantage, or is used for a particular purpose. Further, it is disclosed in the specification on page 9, lines 3-5 that any number of receptacles may be used.

Additionally while Fisher does not expressly disclose that the receptacles are spaced at equally spaced apart heights from the bottom of the concrete form, applicant has not disclosed in the specification that this claimed feature solves a stated problem, provides an advantage, or is used for a particular purpose. Further it is disclosed in the specification on pages 8-9 that any distance would be acceptable.

It appears to be a matter of obvious design choice to one of ordinary skill in the art to have the at least three receptacles at equally spaced apart heights from the bottom of the concrete, as such a modification would perform, equally well, the same function of supporting reinforcement as the chair of Hanson.

Therefore, it would have been *prima facie* obvious to modify Hanson to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Hanson.

Regarding claim 3: The multi-level chair of claim 1, wherein said body has an inverted V-shape including a pair of legs (23 and 25) extending downwardly from an apex (11) of said body (Figure 2).

Regarding claims 5 and 11: The multi-level chair of claims 3 and 6, wherein said chair is nestably stackable (Figure 5 and Col. 4, line 8).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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03/13/2007

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